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he Business Practices Act

**Ministry of
Consumer and
Commercial Relations**

VISION

To promote a fair, safe and
informed marketplace which
supports a competitive
economy in Ontario.

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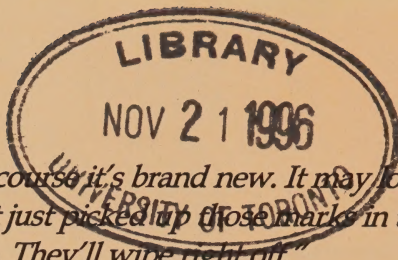
Ontario

A Guide to the **Business Practices Act**

**Ministry of
Consumer and
Commercial Relations**

VISION

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"New? Of course it's brand new. It may look used, but it just picked up those marks in the warehouse. They'll wipe right off."

"I'm sorry, but there's no way we can repair it. We'll have to replace the whole thing."

"I'm not trying to pressure you, but you should sign now. The price goes up 20 per cent tomorrow."

Ever heard lines like these before? Maybe they were true, but maybe they weren't.

"What can I do about it if the salesperson wasn't telling the truth?" you probably wonder. "There's nothing to stop him, is there?" We've got news for you. If the sales pitch isn't true, it's illegal.

If you have been taken, take some action

There is nothing more frustrating than knowing that you've been "taken" and having the feeling that there isn't a thing you can do about it.

Well, maybe you *can* do something. The Province of Ontario has a law — the Business Practices Act — which may help you solve these problems. The Act works in two ways: first, it sets out clearly what unfair business practices are, and

second, it sets out a straightforward method by which you can claim redress if you have been victimized by an unfair business representation.

That representation can be an advertisement, a letter, a direct call by a salesperson, a sales pitch — anything that might induce you to buy a product or hire someone to perform a service.

If a salesperson has used a false, misleading, deceptive or unconscionable sales pitch on you, the Business Practices Act gives you the right — backed by law — to:

- i. ask the business to rescind the agreement, transaction, deal or contract.
- ii. ask a court to rescind the agreement if the business refuses to.
- iii. contact the Ontario Ministry of Consumer and Commercial Relations for advice.

Rescission: let's call the whole thing off

Rescission simply means that an agreement or transaction has been cancelled — as if the transaction never occurred. In the case of a signed contract where you haven't paid anything yet and you haven't taken delivery of the goods, rescission means that the contract is torn up. If it's a matter where you have paid money and you find the product has been misrepresented and

isn't all what the salesperson said it was, rescission would mean that you give the product back and you have your money returned.

A letter requesting rescission is, in effect, a complaint letter with teeth. This time you have the authority of a provincial law to back up your demand for action. Here's how it's done: within six months of entering into an agreement, send your letter requesting rescission by registered mail or deliver it by hand to the salesperson and the company, asking that the transaction be declared null and void. A good idea would be to send one letter to the salesperson and a copy to the sales manager of the firm. Keep a copy for yourself.

Be sure to use the seller's complete name and address and provide your complete name and address and telephone number.

You should do a bit of research before sending the letter to determine what clause of the Business Practices Act (see following pages) you are using as the basis for your complaint, just to ensure that you really do have the right to have the agreement set aside.

Following is an example of how your letter should be worded:

Dear Madams/Sirs:

*On (date) I purchased a (product or service)
from you at a cost of (sum).*

*Before I entered into the agreement you made
a representation which, in my opinion, was an
"unfair practice" under the Business Practices
Act. (Describe complaint briefly and cite
approximate clause under Section 2 of the act.)*

*I hereby exercise my right to rescind the
agreement under Section 4 of the said Act.*

I look forward to your immediate reply.

Yours truly,

Once your letter of rescission has been received, you may find that the company will agree to your request, or will try to work out an amicable settlement with you. Ideally, most problems that you'll encounter can be cleared up this easily.

You can have your day in court

If the company refuses to deal with you, if you still aren't satisfied with the settlement proposed, or if the agreement can't be rescinded, then you can bring a court action against the salesperson and the company, thereby letting a court of law decide the matter.

If the cost of the goods or services is \$6,000 or less, you can sue in Small Claims Court. If it's over that amount you'll have to go to a higher court.

Bringing an action in Small Claims Court is quite inexpensive and you can proceed without a lawyer. Further information about Small Claims Court is available from your local Small Claims Court, listed under Government of Ontario in your telephone book. The Law Society of Upper Canada offers a toll-free lawyer referral service. Call 947-3330 in Toronto; 1-800-268-8326 in the rest of Ontario.

The ministry can help too

Your other choice is to contact the Ontario Ministry of Consumer and Commercial Relations to register a complaint against the business.

The ministry can advise you of your rights and responsibilities and what you can do. The ministry may ask you to file a formal complaint against the company.

In some cases, the Business Practices Act gives the ministry the authority to investigate selling practices to find out if a law under the act has been broken. If an investigation finds a business has broken the law, the business may be prosecuted, which may result in fines or

imprisonment or be subject to other administrative sanctions. In some cases, the consumer's money may be returned as a result of the Ministry's involvement.

What the Business Practices Act covers

The Business Practices Act covers virtually all consumer transactions for goods. Many services are covered as well. This includes certain services related to real property, for example, those services which are provided in terms of listing and appraisal; however, the actual contracts for the sale of real estate are not covered. Also excluded from coverage under the act is the sale of financial services and securities such as stocks, bonds and mutual funds.

It's there when you need it

The best defence against a dishonest business person is still common sense. Most sellers are fair and straightforward, but there are a few who cause problems. You can make sure, very easily, that you don't get into trouble: don't accept outlandish promises, don't be greedy, and approach each buying situation carefully and cautiously. If you follow those three steps, you'll probably never run into problems with unfair

business practices. However, if and when you do have problems, the Business Practices Act can help. The Act isn't a magic wand, though. It is simply a useful tool. How effective it is depends on how well you use it.

Following is Section 2 of the Business Practices Act, being the definitions, for the purposes of the Act, of "false, misleading or deceptive consumer representation" and "unconscionable consumer representations."

For the purposes of this Act, the following shall be deemed to be unfair practices:

1. A false, misleading or deceptive consumer representation including, but without limiting the generality of the foregoing,
 - i. a representation that the goods or services have sponsorship, approval, performance characteristics, accessories, uses, ingredients, benefits or quantities they do not have,
 - ii. a representation that the person who is to supply the goods or services has sponsorship, approval, status, affiliation or connection he does not have,
 - iii. a representation that the goods are of a particular standard, quality, grade, style or model, if they are not,

- iv. a representation that the goods are new, or unused, if they are not or are reconditioned or reclaimed, provided that the reasonable use of goods to enable the seller to service, prepare, test and deliver the goods for the purpose of sale shall not be deemed to make the goods used for the purposes of this subclause,
- v. a representation that the goods have been used to an extent that is materially different from the fact,
- vi. a representation that the goods or services are available for a reason that does not exist,
- vii. a representation that the goods or services have been supplied in accordance with a previous representation, if they have not,
- viii. a representation that the goods or services or any part thereof are available to the consumer when the person making the representation knows or ought to know they will not be supplied,
- ix. a representation that a service, part, replacement or repair is needed, if it is not,

- x. a representation that a specific price advantage exists, if it does not,
 - xi. a representation that misrepresents the authority of a salesperson, representative, employee or agent to negotiate the final terms of the proposed transaction,
 - xii. a representation that the proposed transaction involves or does not involve rights, remedies or obligations if the representation is false or misleading,
 - xiii. a representation using exaggeration, innuendo or ambiguity as to material fact or failing to state a material fact if such use or failure deceives or tends to deceive,
 - xiv. a representation that misrepresents the purpose or intent of any solicitation of or any communication with a consumer.
2. An unconscionable consumer representation made in respect of a particular transaction and in determining whether or not a consumer representation is unconscionable there may be taken into account that the person making the representation or the person's employer or principal knows or ought to know,

- i. that the consumer is not reasonably able to protect his or her interests because of physical infirmity, ignorance, illiteracy, inability to understand the language of an agreement or similar factors,
- ii. that the price grossly exceeds the price at which similar goods or services are readily available to like consumers,
- iii. that the consumer is unable to receive a substantial benefit from the subject-matter of the consumer representation,
- iv. that there is no reasonable probability of payment of the obligation in full by the consumer,
- v. that the proposed transaction is excessively one-sided in favour of someone other than the consumer,
- vi. that the terms and conditions of the proposed transaction are so adverse to the consumer as to be inequitable,
- vii. that he or she is making a misleading statement of opinion on which the consumer is likely to rely to his or her detriment,
- viii. that he or she is subjecting the consumer to undue pressure to enter into the transaction.

Be an informed consumer

The Ontario Ministry of Consumer and Commercial Relations has published a number of other booklets covering a wide range of consumer topics.

For further information or to obtain copies of the ministry brochures call or write to:

General Inquiry Unit
Ministry of Consumer and Commercial
Relations
250 Yonge Street
Toronto ON M5B 2N5

(416) 326-8555

1-800-268-1142

TTY (for the hearing/speech impaired)

(416) 326-8566

We'd like to hear from you.

**Cette publication est également disponible
en français sous le titre *Le consommateur et la
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